



Headquarters Policy Flash

FLASH 2002-19

DATE: July 9, 2002
TO: Procurement Directors
FROM: Office of Procurement and Assistance Policy, ME-61
Office of Procurement and Assistance Management

SUBJECT: **NAICS Appeal of SCI Consulting, Inc. in re Solicitation No. DE-RQ01-02NA00019, Department of Energy, Office of Procurement Operations, Washington, D.C., No. NAICS-2002-05-06-17, June 12, 2002**

SUMMARY: This is an important decision which enables Federal agencies to make better use of GSA schedules to make awards to small businesses.

FLASH 2002-19

July 9, 2002

- **FACTS:** The Department of Energy (DOE) issued a Request for Quotation (RFQ) for computer-related technologies, information systems, and operational support under a General Services Administration (GSA) Federal Supply Schedule (FSS) contract (Schedule #70, SIN 132-51). That GSA FSS contract contained a small business size standard, encourages preference for small business, and authorizes contracting officers to “limit consideration [in the issuance of orders] to those schedule contractors that are small business concerns.”

The DOE RFQ did not state a NAICS code. It did state “Pursuant to [the GSA FSS Contract], only small business concerns will be eligible for award of this task order” and “NNSA intends to award one task order to the responsible small business contractor whose proposal is responsive to the solicitation and determined to be the best value to the Government.”

The appellant entered its appeal before the Small Business Administration’s (SBA’s) Office of Hearings and Appeals (OHA) requesting that OHA assign a NAICS code to the RFQ. It alleged that the RFQ was a *de facto* small business set-aside.

GSA responded in support of DOE, and SBA intervened in support of the appellant.

- **ISSUE:** Does an appellant have standing before the SBA OHA where the procuring agency does not publish a NAICS code in an RFQ under a GSA FSS contract?
- **CONCLUSION:** The OHA held that the RFQ was not a small business set-aside since it did not contain the relevant provisions associated with a set-asides, effectively saying there is no such thing as a *de facto* small business set-aside. Furthermore, it held that where a procurement is not a set-aside, standing is not automatic and the protestor must demonstrate that it “would receive some special benefit as a small business under the procurement.” Here the appellant did not establish that it would obtain any benefit because of its status as a small business or that it was adversely affected by a lack of a NAICS code. Therefore, it lacked standing to bring the size standard appeal.
- **IMPLICATION OF THE DECISION:** Pursuant to DOE policy, contracting officers should limit the solicitation of orders under GSA FSS contracts to small businesses, wherever possible. When doing so, the RFQs should not state a NAICS code, not use the term “small business set-aside,” not use set-aside provisions or clauses, or not do anything that would indicate that the RFQ is a formal small business set-aside.

FLASH 2002-19

July 9, 2002

Instead, the RFQ is effectively using the NAICS code (s) and the size standard (s) of the GSA contract. Offerors responding to the RFQ do not need to affirm their status as a small business, since size was determined at the time of the award of the GSA FSS contract.

For questions related to this subject matter, please contact Robert Webb at 202-586-8264 or via e-mail at Robert.Webb@pr.doe.gov



Gwendolyn S. Cowan, Director

Attachment

cc: PPAG Members